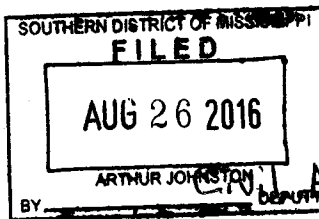


IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI

Cedric Ternes

-VS-



Plaintiff

Action Number 3:16-cv-664-TSL-RHW

DOCTOR BARZIER, Warden Fillyaw

Lt. Leon Shields AND OFFICER Davis

Defendants

BEFORE THE Honorable, \_\_\_\_\_ DISTRICT COURT Judge

INTRODUCTION

COMES NOW, Cedric Ternes, The Plaintiff who is A Inmate  
at Central Mississippi Correctional Facility (CMCF) A UNIT OF THE  
Mississippi Department of Corrections (MDOC).

Pro Se, he Files this complaint Pursuant to 42 U.S.C 1983  
Civil Rights Statute.

Jurisdiction

THE COURT has Jurisdiction Pursuant to 42 U.S.C §1331  
The Federal Question.

THIS THE 21 Day OF August  
\*2016\*

Plaintiff's Name AND Address

Cedric Ternes # 80801

CMCF R/L Sec 4, H-ZONE

P.O. Box 8855D

Pearl, Mississippi 39288

BY: Cedric Ternes  
Cedric Ternes # 80801

OFFICIAL USE ONLY

Civil Action Number	District Judge	Magistrate Judge

42 U.S.C. § 1983 Civil Rights ComplaintPlaintiff InformationNAME: CEDRIC TORNESInmate I.D. # 80801Location: CMLFDivision of: MDDCAddress: P.O. Box 88550City: PearlSTATE: MISSISSIPPIZIP: 39288Defendant's Information1. NAME: DOCTOR BARZIERJob Title: DOCTOR, MD.2. NAME: FillyawJob Title: Warden3. NAME: Leon ShieldsJob Title: Lieutenant4. NAME: MRS. DavisJob Title: OFFICERDefendant's Place of EmploymentNAME: CENTRAL MISSISSIPPI Correctional FacilityAddress: 3794 Highway 468City: Pearl STATE: MISSISSIPPI ZIP: 39208

THIS THE 21 DAY OF AUGUST 2016

BY: Cedric Tornos  
 Cedric Tornos Plaintiff

Parties

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1. Plaintiff: Cedric Torres, is a inmate Located at Central Mississippi Correctional Facility. He was incarcerated AT CMCF on the date of the incident and remain at CMCF Today.
2. Defendant 1: Doctor Borzier, Works at CMCF in the Medical Department. His duties include the care and treatment of inmates.
3. Defendant 2: Warden Fillyaw, is a Warden at CMCF. As Warden he is Responsible for the Security, Care And Protection of All Inmates at CMCF.
4. Defendant 3: Lt. Leon Shields, Is A Lieutenant at CMCF. His Duties include Supervising Correctional Staff Officers assigned to R/C, as well as The Security, Control and Care of inmates housed in R/C.
5. Defendant 4: Officer Davis, a/k/a Mrs Davis. Mrs. Davis was in charge of Tower Security on the date of the incident. Her duties included monitoring, and control of the inmates Assigned to her Zone.

\* Capacity \*

Each Defendant is being Sued in his or her individual Capacity.

Summons Information: Please Send Request For Waiver Of  
Summons To: Jim Hood @ Attorney General's Office, P.O. Box 220  
 Jackson, MS 39205-0220

This The 21 day of August 2016

BY: Cedric Torres  
 Cedric Torres #80801

Previous lawsuit Information

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Pursuant TO 28 U.S.C. § 1746 I cedric Tornes hereby  
declare under The penalty of perjury That I have never in The  
Past Filed a lawsuit in any court, in any district or in  
Any State.

This The 21 day OF August, 2016

Respectfully Submitted

BY: Cedric Tornes  
Cedric Tornes Plaintiff

Plaintiff Name AND Address OF Record

Cedric Tornes # 80801

C.MCF, Sec 4, H-ZONE

P.O. Box 88550

Pearl, Mississippi 39288

Administration Remedies Exhaustion

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The incident took place on May 23, 2015. I Filed an ARP or Request For Administrative Remedy on about JUNE 9<sup>th</sup> 2015. MDOc ARP Rule's Gives its Administrator's 90 days for completion of the exhaustion process. Therefore I exhausted my Administrative Remedies on September 8, 2015.

Tolling Extensions

The United States Congress Did not provide a statute of limitation for Filing a 412 U.S.C § 1983 Civil Action

The United States Supreme Court Ruled that all 1983 claims are governed by State Statute, for general or residual statute for personal Injury actions. Owens v. Okure, 488 U.S. 235, 243-50. 109 S.Ct 573 (1989)

In Miss, The Miss Supreme Court Decided in Wilson v. Garcia, that the Statute of Limitation's in all 1983 claims Form states statute of Limitation for personal tort injuries. Hanner v. State of Miss 833 F.3d 55 (L.A.S.)

All Personal Injury Tort's in Mississ:PP are govern by The Miss Tort Claim Act (MTCA) which provides 1 year. Gale v. Thomas, 759 So. 2d 1150 (Miss)

Therefore it is State law that governs this Statute of Limitations in Federal 1983 Action.

Under Miss Law the filing of A administrative action Toll's the Statute of Limitation for 90 day's. Page v. Univ of So. Miss 878 So. 2d 1003

This tolling adds 90 days to the 1 year Statute of Limitation. William v. Clay County 861 So. 2d 953 (2003)

This Present claim occurred on May 23, 2015. The administrative Remedy Action was filed on JUNE 9<sup>th</sup> tolling the statute until September 8, when it began to Run again. May 23 to June 9<sup>th</sup> equal 17 days. Sept. 8<sup>th</sup> 2015 to Sept 8<sup>th</sup> 2016 minus 17 days equal Aug-22 2016. Therefore this action is timely Filed on This The 21, Day of August 2016.

Cedric L. Torres  
Cedric Torres Plaintiff

STATEMENT OF Claim

On May 23, 2015 While Confined at CMCF Reception Center, R/c E Zone, I was working as a floor walker. A Floor Walker's Job is to clean, help pass out Supplies including Food Trays.

IN E ZONE housing unit, The T.V. Remote was broken. I along with Several other inmate had reported this breakage approximately two weeks Prior to this date.

Around 9:00 AM The inmates Started Banging on their doors trying to get the t.v. channel changed. Normally This banging would prompt the Lt. to bring one of the Remotes in from another ZONE and change the channel.

After the banging continued for a while Lt. Shield arrived, He asked what's all the banging about? I said they want the t.v. Channel changed. Lt. Shield's said, I ain't got time for this shit, Climb your ass up there and change it then.

Shield's then left, The inmates continued the banging. The t.v. is approximately 12 feet up on the wall. To reach it first you must stand on the trash can, from that, step on to the security tower's window ledge, then while holding on with one hand, you must use the other to change the channel.

At approximately 9:15 AM while holding on one handed attempting to reach the button, I Slipped and Fell. While falling my feet got trapped in the trash can causing my back to slam on to the concrete floor at a odd angle.

I Screamed out in pain. I couldn't get up. At the time I assumed my back was broken, There was so much pain. Officer Davis, who was working in the tower saw me fall. She got up, looked down at me and said, You can get up and stop playing now. I said, I can't get up, this is real, I think I broke something. She said, "Yeah Right" She then sat back down and continued doing her nails.

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Lt. Leon Shields.

At approximately 9:35 AM, Lt. Shields arrived. He went to the Tower AND Spoke with Officer Davis. He then came around to me and said, You got til I count to three to get your ass off the floor or I'm gonna spray you.

He removed his can of Pepper spray (Mace) I told him I can't move, I'm hurting real bad, I need some help. He started to count, at three I closed my eyes, however, he didn't spray me. He said, you just lost your job. He then walked off.

Doctor Barzier

Approximately one hour later at 10:35 AM Doctor Barzier arrived escorted by Lt. Shields. He asked me to get up and have a seat so he could check my vitals. I said I couldn't move. I explain that my back was hurting real bad. He then checked my temperature and blood pressure and left.

At 11:28 AM He returned, he again checked my temperature and blood pressure. He again left.

When The lunch meal arrived, Lt. Shields took a tray and sit it on a table, he told the new floor walker, Don't give it to him. He said to me if you gone eat, get up and go to the table. I couldn't move, so I didn't eat.

At 12:30 I had then been on the floor approximately 3 hours. I asked The new Orderly, to call my mother and ask her to call the prison and try and get me some help. I gave him my mother's number.

I have a Sworn affidavit from my mother where she says she called The prison at approximately 12:47 PM. She said she spoke with Warden Fillyaw. She said Warden Fillyaw advised her that he had spoken with the doctor and my situation was being address.

Continuing to suffer in Pain, I again asked the orderly to call -

STATEMENT OF CLAIMWarden Fillyaw

Page 3 of 4

Call again and find out did she reach anybody. The orderly told me she said she had spoken with Warden Fillyaw. The orderly said, she said to tell me she was about to call again.

Continuing her affidavit says, she called and again spoke with Warden Fillyaw at approximately 2:01 PM. She said Warden Fillyaw assured her that an ambulance had been called and was on its way to take me to the hospital.

At approx 3:17 pm Lt. Shield's and Officer Davis approached me. Officer Davis said, you must think this is Walmart, we don't pay slip and falls here. Both Davis and Shield's started laughing, Shield's then said, I'd bet that if I sprayed his ass he'd move, this got more laughter.

Finally at approximately 3:49 PM, over 5 hours later the emergency personnel arrived. These first responders were from a private company. While being driven to the hospital I questioned the attendant James Franklin as to why did it take so long to get there. He said it took them a few minutes to get past the gate. I said, I've been on the floor waiting more than 5 hours. He said, "we didn't get the call until 3:04 PM."

I was rushed to the emergency room at Central Mississippi Medical Center. There I was given X-rays and examined by Doctor David Dean. In his report, <sup>①</sup> he noted, Signs of contusion, Multiple Cervical Sprain, Swelling about the Thoracic Myofascial Area.

His follow up instructions stated A follow up/recheck was scheduled in 2-3 days, Reason's listed stated, possible Hematoma.

I was given injections, medications and later discharged. After arriving back at CMCF, I was placed in a cell in the infirmary ward. The prescribed medications were taken and in there place I was given Aspirin. I was never taken for the follow up exam.

Officer Davis SET the stage for deliberate indifference. She was the first to assume I was faking. She then told this to Lt. Shield's causing him to take up the same position.



CONTINUED STATEMENT OF claim

Page 4 of 4

Just like a domino effect it continued. Shields relayed the information to the Doctor and finally the doctor told the warden.

Either one of the defendant's could have picked up the phone and called for emergency assistance, instead, they chose threats, jokes and laughter at my pain and suffering.

The defendant's actions exhibited a clear cause of action based upon deliberate indifference to my pain and suffering.

Pursuant to 28 U.S.C. § 1746, I Cedric Torner do hereby swear under the penalty of perjury that the statement of claim presented herein is TRUE AND CORRECT.

This The 21 Day of August 2016.

Plaintiff's Name AND Address  
OF Record

Cedric Torner #80801  
Cmcf R/c Sec 4, H-ZONE  
P.O. Box 88550  
Pearl, MISSISSIPPI 39288

BY: Cedric Torner  
Cedric Torner Plaintiff

FOOTNOTE

- ① I submitted a medical Release form to Central Mississippi Medical Center. I have a copy of the emergency room report signed by Doctor, David Dean.

Claim For Relief

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Plaintiff, Cedric Tornes claim for Relief...

Plaintiff's Claim for Relief

This is A 42 U.S.C. 1983 Civil Rights Civil Action. The Plaintiff is Entitled TO Relief Where he suffered severe Pain due to the defendant's neglect and deliberate indifference to his suffering, Their action's violated my Rights that are protected  
① Under The eighth Amendment OF The UNITED STATES CONSTITUTION'S cruel and unusual Punishment clause.

This The 21 day OF August 2016

BY: Cedric Tornes  
cedric Tornes, Plaintiff

Footnote: ①

Claim For Relief submitted under The 8<sup>th</sup> Amendment OF the U. S. Constitution.

RELIEF REQUESTED

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Each OF The defendants, over A period of hours could have Simply picked up The phone and called on

Demand for Relief

A: Award compensatory damages in the following Amounts:

1. \$ 50,000, Jointly and Severally against All the defendants, For physical Pain, suffering, and emotional injury.
2. \$ 20,000, Jointly and Severally against Defendant's Doctor Barzier AND Warden Fillyaw For failure to Supervize, failure to Assist and failure to provide care.

B. Award punitive damages in the following Amounts.

1. \$ 5,000 Each against Defendant's Shields and Davis.
2. \$ 10,000 against Warden Fillyaw.
3. \$ 20,000 against Doctor Barzier.

\*JURY Trial Demanded\*

Plaintiff's Name AND Address

Cedric Ternes #80801  
CMCF Sec 4 H-ZONE  
P.O. Box 88550  
Pearl, MS 39288

This the 21 Day OF  
August 2016

BY: Cedric Ternes  
Cedric Ternes Plaintiff